FALLON ICE & COLD STORAGE CO., INC.
WILLOW LANE CORP.

IBLA 84-781 Decided February 28, 1985

Appeal from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management, rejecting appraisal by appraiser chosen by appellants, determining options for proposed land exchange N-29324 and requiring acceptance of a proposed option.

Set aside; referred for hearing.

1. Appraisals -- Federal Land Policy and Management Act of 1976: Exchanges -- Rules of Practice: Hearings

Where the proponent of a land exchange raises substantial questions concerning the accuracy of a BLM appraisal of the value of the selected land, including the use of appropriate comparable sales, the need to apply a discount to financed transactions and the extent of adjustments to assure comparability for the cost of bringing in utilities and modifying topography, the case will be referred to the Hearings Division for a fact-finding hearing.

APPEARANCES: Donald M. Kitchin, president, Fallon Ice & Cold Storage Co., Inc., and Charles J. Hughes, president, Willow Lane Corporation, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Fallon Ice & Cold Storage Co., Inc. (Fallon), and Willow Lane Corporation (Willow Lane) have appealed from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management (BLM), dated June 26, 1984, requiring them to accept either of two options with respect to proposed land exchange N-29324.

By letter dated September 6, 1975, appellants proposed to the Superintendent, Toiyabe National Forest, Forest Service, Department of Agriculture, the exchange of 80 acres of land situated within the national forest 1/ for

1/ By letter dated Apr. 25, 1976, appellants amended the description of the offered land to include 80 acres situated in the NW 1/4 NW 1/4 sec. 9, T. 13 N., R. 19 E., and the SE 1/4 NE 1/4 sec. 28, T. 14 N., R. 19 E., Mount Diablo Meridian, Douglas County, Nevada.

BLM land located on the north side of Interstate 15 near a highway interchange and across the highway from the town of Mesquite, Nevada. Appellants stated that the selected land would potentially be usable "for an overnighter camper, trailer, recreational vehicle facility." Appellants subsequently submitted a formal exchange application, dated April 27, 1979, which was forwarded to BLM by the Forest Service and received on May 18, 1979. 2/ On June 3, 1981, BLM published a notice of the proposed exchange in the Federal Register (46 FR 29770), stating that the values of the land to be exchanged are "approximately equal." 3/ On July 15, 1981, BLM published in the Federal Register (46 FR 36756) an amended description of the selected land, described as 86.65 acres of land situated in lots 6, 9, 12, and 14, SE 1/4 SE 1/4 SE 1/4 NW 1/4, S 1/2 S 1/2 SW 1/4 NE 1/4, S 1/2 SW 1/4 SE 1/4 NE 1/4, E 1/2 E 1/2 NE 1/4 SW 1/4 sec. 9, T. 13 S., R. 71 E., Mount Diablo Meridian, Clark County, Nevada. The determination that the values were approximately equal was apparently based on an April 1, 1979, preliminary analysis by a Forest Service realty specialist who concluded that both the selected and offered land had a per acre value of about $500. It was contemplated that the exchange would be consummated pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1982).

On April 16, 1982, Richard P. Webster, a Forest Service appraiser, prepared an appraisal report, analyzing the fair market value of the selected land. The report was approved by Clifton E. Brownell, a BLM review appraiser on April 26, 1982. Webster concluded that the fair market value of the entire parcel of selected land, as of March 25, 1982, was $295,500. Webster noted that the parcel was accessed by a paved road, but otherwise was unimproved, and that it was zoned in part (34.15 acres) for light manufacturing (M-1), including general commercial use with a permit, and in part (52.5 acres) for single family residences (R-1). Webster concluded that the area zoned R-1, which does not front on the access road, had a highest and best use for investment for future residential development and the area zoned M-1, which fronts on the access road, had a highest and best use for future light manufacturing or commercial use. Webster used the comparable sales method of appraisal, by analysis of sales of similar properties and adjustment for the differences in terms, time, location, physical characteristics, access, utilities, and size. Webster divided the parcel into two parts based on the different zoning and independently appraised each part. He concluded that the portion of the tract zoned M-1 was valued at $7,500 per acre and the portion of the tract zoned R-1 was valued at $750 per acre.

On October 13, 1982, Daniel A. Leck, a private appraiser hired by appellants, also prepared an appraisal report analyzing the fair market value of the selected land. Leck concluded that the fair market value of the entire

2/ Appellants described the selected land as approximately 82.5 acres of land situated in portions of sec. 9, T. 13 S., R. 71 E., Mount Diablo Meridian, Clark County, Nevada.

3/ The environmental assessment which is to be prepared before publication of the notice of realty action was not in the case file. See 46 FR 1636 (Jan. 6, 1981).

parcel of land, as of October 13, 1982, was $190,000 ($2,200 per acre), based on a highest and best use of the land for speculative investment. Leck also used a comparable sales method of appraisal, with adjustments for market conditions, time, location, and topography and cost of installation of utilities and acquisition of water right shares.

By letter dated January 24, 1983, the Forest Service forwarded to appellants an informal review of the Webster and Leck appraisal reports by Karl Esplin, a BLM review appraiser. The review stated that neither appraisal would be satisfactory if appellants reduced the selected acreage, as they had proposed as a means of reducing the disparity between the 1982 appraised values of the selected and offered lands. The Esplin review also stated that the Leck appraisal was inaccurate because it did not take into account the fact that the portion of the tract zoned M-1 had a highest and best use for commercial use rather than speculative investment. In its transmittal letter, the Forest Service indicated that as a result of several discussions, BLM, the Forest Service, and appellants had agreed that a new appraisal would be prepared by an appraiser selected by appellants and approved by BLM. The letter also noted the necessity to meet with the chosen appraiser to establish the "standard of the report to be prepared and the estate to be appraised."

By letter dated August 18, 1983, the Forest Service outlined several options to appellants regarding consummation of the proposed exchange. By letter dated August 24, 1983, appellants selected option 4, which involved the exchange of the land within the forest for a parcel of equal value within the original tract zoned M-1, and the acquisition of the remainder of the M-1 tract through a modified competitive bidding process (i.e., appellants, as adjoining land owners, would be allowed to match the highest bid). Appellants also selected Leck as the appraiser.

By letter dated October 25, 1983, the District Manager, BLM, approved the selection of Leck as the appraiser and outlined certain steps to be taken to further the land exchange. He noted that BLM had subdivided the original tract into 11 parcels and asked appellants to identify these in order of priority of selection. Leck was to prepare a preliminary estimate of the value of each of the 11 parcels and the Forest Service was to review its appraisal of the offered lands owned by appellants. Following the preparation of both reports a preliminary selection of comparable tracts would be made. Following selection, three final appraisal reports would be prepared pursuant to a "statement of work" which would establish the procedures and guidelines to be followed in the preparation of the appraisal reports. The three reports contemplated were for the selected lands, for the balance of the M-1 lands, and for the R-1 lands. The exchange would be made based upon the result of the first report and the balance of the lands would be sold in a modified public sale.

On November 30, 1983, Leck prepared the preliminary estimate of the value of the selected land as of November 26, 1983. Leck concluded that a portion of the land zoned M-1 consisting of nine parcels selected by appellants with the highest designated priority of selection and totaling 18.24 acres, had a fair market value of $57,500 ($3,153 per acre). All of

the land was considered by Leck to have a highest and best use for speculative investment.

On March 2, 1984, appellants' appraiser was provided a copy of BLM comments, dated February 6, 1984, on the preliminary estimate and a "Statement of Work" identifying certain guidelines to be followed in the subsequent appraisal. On April 2, 1984, Leck prepared the contemplated appraisal report, analyzing the fair market value of the selected land, as of March 30, 1984. In this report Leck made the following observations and conclusions. The land is situated in the Virgin River Valley near the town of Mesquite, Nevada, 80 miles northeast of Las Vegas, Nevada, and 35 miles southwest of St. George, Utah. The town of Mesquite has 440 homes, a population of 1,250, borders Interstate 15, and is in an area of slow growth. The town is virtually landlocked by public land and had a limited amount of property transactions in the 3 to 4 years prior to the appraisal, in part due to high interest rates and instability in the mortgage markets. Leck stated that, if the public land is transferred into private ownership, growth would be expected to increase, as previous growth has been slowed due to the unavailability of good commercial and residential vacant land. Leck stated that the selected land is situated on the northwest margin of Interstate 15 at the Mesquite East Interchange, which is the first interchange upon entering Nevada from Arizona. The land is accessed by a paved road which crosses the western portion of the parcel and would have to be improved with water, sewer, and electrical service which are currently located 2,100 feet south of the property. In addition, Leck stated that a culvert would have to be constructed across the entrance to the property. Leck also noted that, according to State Highway Department figures, traffic on the west bound off-ramp for the interstate has averaged 563 cars each year from 1975 to 1982. Leck determined the usable acreage of each of the 11 parcels identified by BLM within the M-1 parcel. Leck concluded that both the R-1 and M-1 parcels had a highest and best use for speculative investment. It was his opinion that residential and commercial development of the sites was not likely due to the limited demand for housing and commercial space, the availability of other vacant land, the high cost of bringing utilities to the sites, and poor soil conditions.

As a basis for his determination of the appraised value, Leck used the comparable sales method of appraisal, based on similar parcels of vacant land sold in the Mesquite area. Leck selected sale No. 2 as the best comparable sale. That sale involved a 17.5-acre parcel of land (with utilities) located south of the Interstate 15 interchange. Leck determined the sales price of the parcel, using a 20-percent discount to convert from a financed to a cash transaction, resulting in a per acre value of $12,857. Leck then concluded that, after adjusting for the differences between the selected land and sale No. 2, the selected land would have a value of $12,000 per usable acre, with utilities. Leck then computed an exchange value for the offered land, 4/

4/ The exchange value was $57,500, i.e., the appraised value of the offered land ($46,000) plus 25 percent of that value which is permitted as a cash equalization payment in land exchanges. See 43 U.S.C. § 1716(b) (1982) and 43 CFR 2201.3(a).

adjusted by adding in the cost of bringing in utilities and the cost of modifying the topography of the land, and the number of usable acres (valued at $12,000 per acre), which could be obtained with that value (14.41 acres). He then selected appellants' subparcels in descending order of priority until he reached the approximate limit of usable acres which could be acquired in an exchange. This process resulted in the selection of parcels C through I, totaling 14.04 acres (10.466 usable acres), which were held to have an approximate value of $57,500, i.e., the exchange value.

By memorandum to the Deputy State Director, Operations, dated April 30, 1984, Charles E. Hancock, Chief, Branch of Appraisal, reviewed Leck's April 1984 appraisal, concluding that he could not approve the report. He stated that Leck should have considered three particular sales in the Mesquite area, including a November 1983 sale, and he questioned whether a 20-percent discount should have been used to translate a financed into a cash transaction as Leck did not verify that sellers generally were giving such a discount. The appraiser also stated that Leck did not fully comply with the guidelines set forth in the "Statement of Work," identifying categories which he believed Leck did not follow (III.C., D., and E.) but not specifying in detail the nature of the deviation or how this affected the determination.

By memorandum to the State Director, dated June 12, 1984, the Deputy State Director, Operations, summarized a May 30, 1984, review of Leck's October 1982, November 1983, and March 1984 appraisals made by Clifton E. Brownell. Brownell had also concluded that Leck's March 1984 appraisal could not be approved because of inconsistencies in the analyses of sales data among the three appraisals and Leck's unwillingness to consider other Mesquite area sales which had been reported to Leck prior to his appraisal. In particular, Brownell noted that, although it was proper to translate financed into cash transactions (which Leck had overlooked in his first two appraisals) Leck did not explain why the resulting per acre value of sale No. 2, after applying the 20-percent discount for a cash transaction, was rounded to $12,000 not $12,900. Brownell also questioned whether the 20-percent discount should be applied regardless of the differing payoff periods and interest rates for the financed transactions. Brownell reported that the sellers of the sale No. 2 tract stated that in the June 1981 sale of the property they would have accepted a 5.9 percent discount for cash. Brownell also stated that other sellers had stated that they would not have taken much less for cash, or would not have accepted cash. Brownell further stated that there were three factors that reduce the reliability of sale No. 2 as a comparable tract. Brownell also challenged Leck's decision not to consider comparable sales of land near other state-line communities in Nevada, e.g., Wendover and Jackpot, because of the higher population base within a 150-mile radius of those towns. Brownell stated that, considering the influx of people from outside the 150-mile radius area and the potential to attract people through development of the area, the potential for growth was comparable to that of Wendover and Jackpot. Brownell also stated that Leck improperly ignored the sale of a 4.5-acre tract across from sale No. 2, and other sales, including the November 1983 sale of a 14-acre tract across the

highway from the Western Village motel/casino complex, 5/ which sold for $32,143 per acre. 6/

Brownell then undertook an appraisal, based on his personal knowledge and existing sales data. In his appraisal he used seven comparable sales as a basis for determining the market value of the parcels within the M-1 zoned portion of the tract. He then proposed the exchange of one of two groups of parcels selected by him for the land owned by appellants. With respect to option 1, the BLM land chosen was a grouping of parcels F and G (3.60 usable acres), which he determined to have an adjusted value of $49,900. Option 2 was a grouping of parcels F, G, and H (3.25 usable acres) which he determined to have an adjusted value of $43,900.

In its June 1984 decision, BLM required appellants to accept one of the two options described in the Brownell appraisal with respect to proposed land exchange N-29324. 7/ Because of the value of the offered land, BLM stated that appellants would be required to pay an additional $3,900 if the first option was exercised. Under the second option the Forest Service would pay $2,100 to appellants, because of the greater value of the offered land. The BLM decision required appellants to take certain steps to consummate the exchange, including conveying title to the offered land to the United States, "within 30 days of your receipt of this decision." BLM further stated that "[f]ailure to submit the required documents within the period specified shall constitute non-acceptance of the exchange, whereby exchange application N-29324 is rejected concurrently by this decision." Appellants appealed from this decision.

5/ The Western Village complex was described in Webster's April 1982 appraisal report at page 7 as follows:

"Several years ago, Western Village was constructed in Mesquite immediately adjacent to Mesquite's west Interstate 15 interchange. It is the largest and most visible business enterprise in the community. It has a service station, motel, casino and restaurant and is a popular truck stop. The Village has a large paved area to accommodate numerous diesel trucks. In the spring of 1981, Western Village acquired an additional 22 acres immediately to the east for expansion.

"The location of Western Village is very desirable. Being immediately adjacent to Mesquite's west interchange provides convenient access to the traveling public. From Mesquite, the first service conveniently available to motorists on I-15 is about 35 miles away at St. George, Utah, to the northeast or 80 miles to the southeast [sic] at Las Vegas. The casino at the Village is an attraction especially to those seeking the type of recreation for which Nevada is famous."

6/ In his March 1984 appraisal report, at page 34, Leck had stated that he had considered other sales in the Mesquite area but had not used them "due to either lack of comparability [or] inability to verify the information." With respect to the November 1983 sale, he stated that he was unable to verify the sales price. Brownell said he had been able to verify it.

7/ BLM also noted that the appraisal of the offered land had been approved, with an estimated value of $46,000. This value was established as of Jan. 18, 1984, in an updated appraisal of the land, dated Jan. 20, 1984, by the Forest Service. Appellants did not challenge this appraised value.

In their statement of reasons for appeal, appellants challenge the appraised value of the selected land set forth in the May 1984 Brownell appraisal and adopted in the June 1984 BLM decision. In support of the statement of reasons appellants submit a letter from Leck, dated July 10, 1984, which challenges the Brownell appraisal and supports Leck's March 1984 appraisal. Leck states his opinion that it was appropriate to apply a 20-percent discount to the sales price in financed transactions to determine what the sales price would have been in a cash transaction. Leck contends that the discount is warranted because the 1980-82 recession increased availability of vacant land. Leck states that because of the inability to obtain conventional financing for the purchase of undeveloped land, the market has turned to "creative" financing, including discounts for cash purchases. Leck states that only one major lending institution in Nevada will finance the purchase of vacant land and offers two sales of purportedly similar property in March 1983, where the cash sales price of one is 20 percent less than the financed sales price of the other as proof for the adjustment made by him. Leck also states that the use of sale No. 2 was appropriate for comparable values and that the negotiated sale price of $265,000 was the true determinant of the value of that tract. Leck notes that the sales price was based on abandonment of a small parcel by the State Highway Department, which should have been completed by mid August. Leck also states that of all the sales considered by Brownell, sale No. 2 was the only one which was "exposed on the open market." Leck notes that Brownell's sale No. 5 was the 1981 sale of the same property as sale No. 2 and that sale No. 5 resulted in a foreclosure, an "indication of the area's economy."

Leck further states that the town of Mesquite does not have the same potential for growth as other state-line communities because Mesquite draws from a significantly smaller population base and has not proven itself to attract those from outside the area. Leck disputes Brownell's statement that 2,000 to 2,500 trucks stop daily at the Western Village complex in Mesquite, and provides updated traffic count data. (Appellant Kitchin's July 20, 1984, letter notes that Cal Leckbee, apparently with the Arizona Department of Transportation, estimated that 213 to 266 trucks per day stop at the Western Village complex.) With respect to Brownell's assertion that Leck ignored other sales, Leck states that prior to 1982 sales of land in Mesquite were primarily affected by the proposed construction of the "MX Racetrack Missile Project" and that, with its abandonment in 1982, there was a market decline. Leck, thus, discounts Brownell's use of the sale of a 4.5-acre parcel (including a service station) in Mesquite in June 1980 for $39,000 per acre as a comparable transaction. Leck argues that this decline in market value is evidenced by a 28-percent decline in the price of the property in sale No. 2 (Brownell's No. 5) between June 1981 and its resale in October 1983. With respect to the November 1983 sale of property across from the Western Village complex for $450,000 or $32,143 per acre (Brownell's sale No. 3), Leck states that the sale was not made on the open market, and this figure represents the property's stamp value, which may not be the sales price. Leck also notes that for Brownell's sale No. 4, which involved land sold in an exchange in March 1981, the land exchanged has frontage along the highway near the east bound off ramp, has full utilities, and is across the street from the parcel valued at $450,000. Finally, Leck concludes that Brownell failed to take into account an abundance of vacant land in the Mesquite area with full

utilities, a limited demand for the purchase of such land, and no interest from outside investors.

[1] The general standard for reviewing appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM or the appellant fails to show by convincing evidence that the charges are excessive. Clinton Impson, 83 IBLA 72 (1984). After carefully reviewing the record, including the evidence presented by appellants, we conclude that there is sufficient question that the BLM (Brownell) appraisal of the selected land accurately determined its value to relegate the matter for resolution by an Administrative Law Judge after a hearing, pursuant to 43 CFR 4.415. Brown-Tankersley Trust, 76 IBLA 48 (1983).

In the referral of this matter to the Administrative Law Judge we do not intend to limit either the scope of the parties' presentations or the Administrative Law Judge's inquiry at the hearing. We find it appropriate, however, to state those issues we believe should be addressed at the hearing in order that the parties might better prepare for the hearing. A determination should be made as to which parcels within the portion of the tract zoned M-1 could be selected by appellant in view of the value of the offered lands, allowing for a cash equalization payment of up to 25 percent and preferences indicated by appellants. 8/ The appraisals used for the determination must be shown to have been prepared in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions," 43 CFR 2201.3(b) (1983); Paul Kellerblock, 38 IBLA 160 (1978).

We also deem it appropriate for the Administrative Law Judge to determine what discount, if any, should be applied when translating a financed purchase into a cash transaction, as fair market value is defined as the "amount in cash, or in terms reasonably equivalent to cash," for which a willing owner would sell land to a willing buyer. Cole Industries, Inc., 82 IBLA 289, 293 n.6 (1984), quoting from Full Circle, Inc., 35 IBLA 325, 333, 85 I.D. 207, 211 (1978). Therefore, where a sales price is determined in a financed transaction and it can be reliably shown that the sales price would have been lower if the transaction had been in cash, the cash sales price should be used as the true indicator of the fair market value of the property. In his May 1984 appraisal report, at pages 18 and 34, Brownell did not use any discount because "the results of interviews with sellers do not indicate that any significant adjustment for cash equivalency is warranted." Appellants, however, present evidence of two apparently comparable sales which indicates that cash sales in the Mesquite area are discounted. While appellants have not proven that discounts for cash sales are generally given, they should be allowed to pursue this question at the hearing. Of course, if it is established that particular comparable sales were cash instead of financed transactions, it would be irrelevant what other sellers would do as to these sales.

8/ We note that BLM, in its June 1984 decision, set forth an additional option, with a reserved easement. However, appellants have never expressed interest in such option.

A further issue that must be addressed is what adjustments should be made in view of changed market conditions, i.e., what sales may fairly be regarded as comparable, given such changes. Appellants object to the use of sales prior to 1982, i.e., before the abandonment of the MX missile project. Appellants also contend that the 1980-82 recession, the decrease in the availability of conventional financing, and the increase in the availability of vacant land have affected the marketability of vacant land. That is, appellants argue that vacant land is not now selling for the same prices that it was selling for prior to these occurrences. With the exception of Brownell's sale No. 3 and sale No. 6, all of the sales used by Brownell as comparable to the M-1 land fall into the category of pre-1982 sales. With respect to sale No. 3, i.e., the sale of 14 acres across the highway from Western Village, Brownell states in this May 1984 appraisal report, at page 57, that the sales price "may represent a premium price because of its location adjacent to Western Village." 9/ Leck's sale No. 2 indicates that the market in Mesquite, especially for property similar to the selected land, may not support pre-1982 sales prices. This sale was described in the April 1982 Webster appraisal report, approved by Brownell, at page 21, as the "best indicator of value because of its similar location and because it requires the least adjustments for other factors." BLM has not accounted for the fact that the sales price in October 1983 was $15,588 per acre, compared to $20,588 in September 1981. We conclude that the parties should be given an opportunity to demonstrate whether the market in the Mesquite area continues to reflect the sales prices for comparable sites of vacant land experienced prior to 1982, whether the MX missile project influenced speculation in land and land prices in Mesquite and neighboring communities before it was abandoned, and whether vacant land would sell for lower prices under the present economic conditions. 10/

9/ Brownell does not state the extent to which this particular location added a premium to the sales price, especially where Western Village appears to be the focal point of the business community of Mesquite and the owners of the complex are limited in their selection of the land for expansion -- such that sellers of surrounding land probably can charge a higher price. This likewise may have tainted Brownell's sale No. 4. The April 1982 Webster appraisal report, approved by Brownell, at page 19, states that "in order to receive this property for expansion of Western Village the 'buyer' may have 'paid' a premium price." In his May 1984 appraisal report at page 18, Brownell also states that sales No. 3 and No. 4 "no doubt commanded a premium price as add-ons to the Village complex. The Village complex at present constitutes the 'center of location' for commercial properties in Mesquite." The extent of the premium needs to be explored at the hearing.

10/ The downturn in the development of vacant land and the potential effect of the MX project on land speculation is best illustrated in the April 1982 Webster appraisal report, approved by Brownell, at page 11:

"In July 1980, a 27 acre tract on an interchange at Glendale 32 miles to the southwest was purchased for speculative reasons in anticipation of the MX missile basing coming to Nevada. The buyer felt that if the MX basing did not occur, it would still be a good piece of property for rural homesites.

In addition, adjustments to the estimated value of the selected comparable tracts must be considered. In his May 1984 appraisal report, Brownell first determined the total cost of bringing utilities to the entire M-1 part (34.15 acres), using Leck's cost figures but running the utilities to the north boundary of the part (900 feet more than Leck), and then calculated a per acre cost for the 29.33 usable acres in the part. This per acre cost (multiplied by the number of acres in a tract) was then subtracted from the estimated value of each designated tract. We do not believe this was an appropriate approach. It ignores the fact that the total cost of bringing utilities must be paid with respect to any tract of whatever size which is sold or exchanged out of the M-1 part. It cannot be assumed that the remaining tracts will be sold or exchanged. Thus, if, as Brownell assumes, tract 1 (3.60 usable acres) under option 1 is the only acceptable tract for exchange with appellants, the total cost of bringing utilities to that tract must be an adjustment to the value of that tract. 11/ As can be readily seen, this results in a significant decrease in the estimated value of the tract such that, given the value of appellants' offered lands, appellants could select a significantly larger tract. This is the approach adopted by Leck, who determined that appellants could select a tract with 10.466 usable acres. That tract, using Leck's per acre value of $12,000 (with utilities), would be valued at $125,592. After subtracting the cost of bringing utilities to the tract ($70,500), the adjusted value would be $55,092. 12/

Finally, considering the passage of time since the last appraisals of the selected and offered lands, reappraisals of those tracts may be warranted. Paul Kellerblock, supra at 168, 172. As previously stated, any such appraisal must be in conformance with the requirements of 43 CFR 2201.3(b) (1983).

The decision by the Administrative Law Judge will be final for the Department in the absence of a timely appeal by an adversely affected party.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

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fn. 10 (continued)
The buyer of this property and a partner planned to install a recreation vehicle park on 25 acres adjacent to this 27 acre sale but have postponed construction because of high interest rates and cost of construction. This property is similarly located near an interstate highway interchange and near the area typical of the market on which the subject is located. It lacks the service facilities found in Mesquite. It does, however, give some indication as to what properties in this area are being purchased for."

11/ In this light, consideration should focus only on the cost of bringing utilities to the tract itself.

12/ Leck and Brownell also disagree on the amount of the adjustment which should be made for the cost of modifying the topography of the selected land and the number of usable acres in each parcel within the portion of the tract zoned M-1. These questions should also be resolved by the Administrative Law Judge.

from is set aside and the case is referred to the Hearings Division for determination of the value and amount of lands that may be selected in exchange for appellants' offered lands.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge